

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SALVADOR A. RODRIGUEZ,

Petitioner,

v.

DERRAL ADAMS, Warden,

Respondent.

No. C 04-2233 PJH

**ORDER REOPENING CASE;
RE SUPPLEMENTAL BRIEFING;
REQUIRING RECORD
SUPPLEMENTATION**


On March 1, 2007, this court appointed counsel for petitioner Salvador Rodriguez ("Rodriguez") pursuant to 18 U.S.C. § 3006A(2)(B) based on the weakness of his presentation in his petition and traverse, his lack of knowledge of the law and his difficulty handling legal matters, and letters the court received from a former investigator, William Walter Foscett, suggesting that an evidentiary hearing might be appropriate in the case. On March 14, 2007, current counsel, Linda Fullerton, was appointed. On March 4, 2008, following supplemental briefing, the court granted petitioner's request for a stay to exhaust an unexhausted claim in state court and administratively closed the case while Rodriguez exhausted the claim. In a letter received by the court on July 21, 2009, Salvador's attorney, Ms. Fullerton, informed the court that the California Supreme Court denied Rodriguez's habeas petition on July 15, 2009.

The sole claim presented by Rodriguez is now exhausted. In that claim, Rodriguez alleges that his counsel was ineffective for: (1) failing to present witnesses that were

1 located and interviewed by a defense investigator (Foskett) prior to trial that would have
2 supported his position that the homicide was justified, including Roy Ramsey, Elaine
3 Caufield, and Dennis Lyons; and (2) failing to locate and investigate additional witnesses
4 that were available and who would have testified that Rodriguez's role in the homicide was
5 justified, including Kenneth Jackson and Vonree Alberty. Because the claim as stated was
6 first presented in Rodriguez's supplemental traverse, respondent has not had an
7 opportunity to address the claim on its merits. Accordingly, now that the claim has been
8 exhausted, the court will permit respondent to file an opposition brief **no later than thirty**
9 **days from the date of this order.** Rodriguez may file a reply brief **no later than fourteen**
10 **days** after the filing of respondent's opposition brief. Rodriguez is further ORDERED to
11 submit a copy of his habeas petition presented to the California Supreme Court on
12 November 10, 2008, and a copy of the state court's July 15, 2009 order to this court.

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14 **IT IS SO ORDERED.**

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16 Dated: July 24, 2009

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19 PHYLLIS J. HAMILTON
20 United States District Judge
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